FILE COPY

FILED
OCT 21 193
Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No .2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

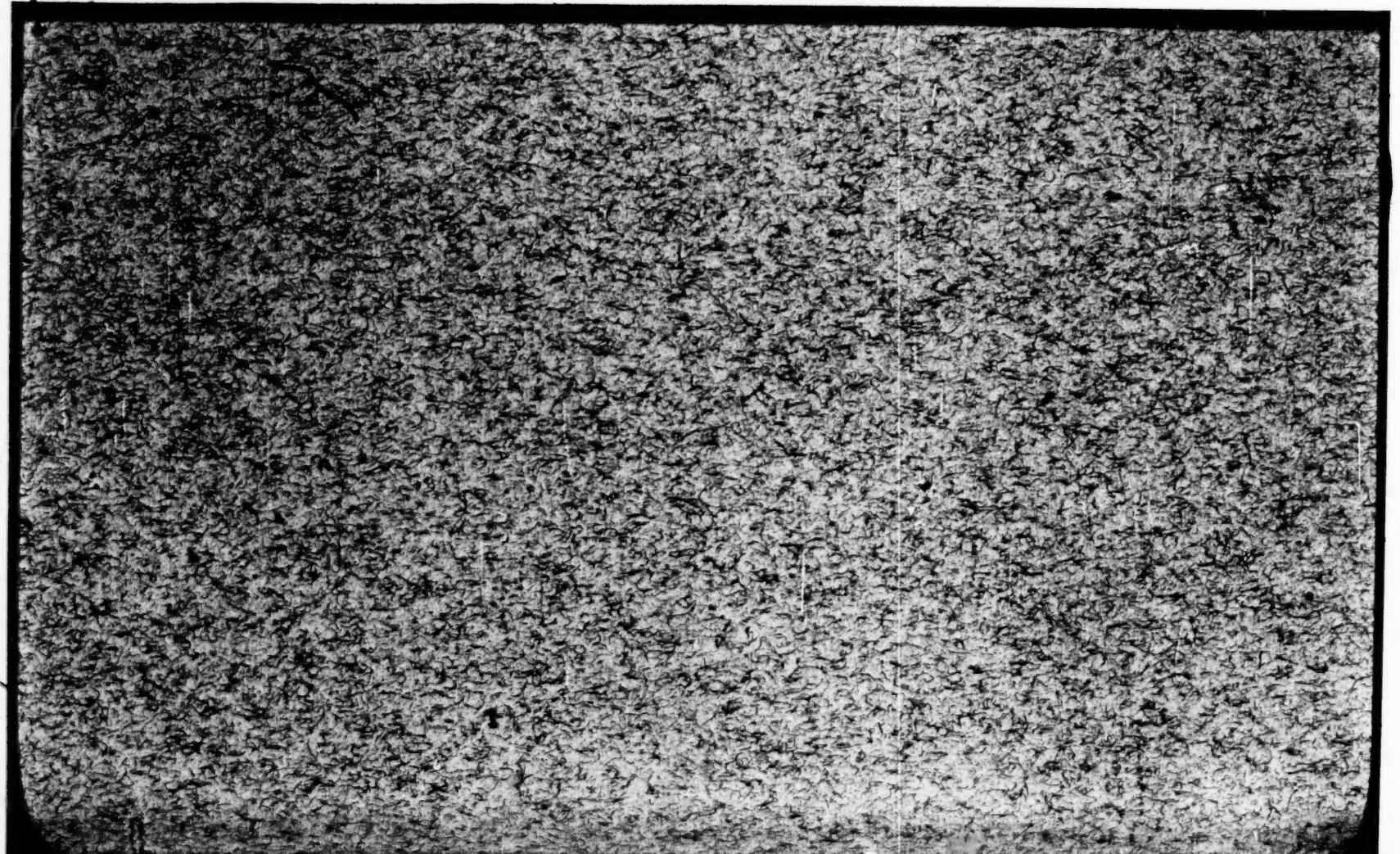
vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

REPLY ARGUMENT UPON REARGUMENT OF ARTHUR B. SCHAFFNER, OF CHICAGO, ILLINOIS, AND OF P. F. HENDERSON AND OF HENDERSONS & SALLEY, OF AIKEN, SOUTH CAROLINA, FOR PLAINTIFFS IN ERROR.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Counsel for Plaintiffs in Error.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1930.

No. 2

FRANCIS BEIDLER, II, AND GEORGE ENGELKING, AS EXECUTORS OF THE LAST WILL AND TESTAMENT OF FRANCIS BEIDLER, PLAINTIFFS IN ERROR,

vs.

SOUTH CAROLINA TAX COMMISSION.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

ARGUMENT IN REPLY.

Counsel for defendant in error makes three principal claims in his argument to which we ask to reply briefly in their order.

First Claim.

To the position that "the debtor may be compelled to pay" within South Carolina, and the position that

"Illinois, the decedent's domicile, has no jurisdiction of the thing, the debt and the dividend, until the laws of South Carolina are satisfied and the debt and dividend delivered to the executor for distribution under the Will," we reply,

(*a*) That the facts stated are not pertinent under the present rule so solemnly and recently announced by this Court in the Minnesota case and in the Missouri case, to govern the taxation of intangibles, and,

(*b*) Under any rule, in this particular case, the records show that the laws of South Carolina need never be resorted to in order to collect the debt herein. If there were resistance, which is inconceivable in this case, the debt could be collected in Massachusetts, New York, Pennsylvania, Maryland, Arkansas or Missouri. Under the decisions of this Court in Ellett *vs.* Wilkins, 9 Wall, 782, 108 U. S. 156, title to the debt vested in Mr. Beidler's domiciliary executor absolutely, immediately upon his qualification as executor. (See our former argument, pp. 43-52.) The reference in the Frick case, if applicable at all, is applicable only to corporate stocks, and is certainly not applicable to a debt to which the rule announced in Ellett *vs.* Wilkins applies.

Second Claim.

To the remarkable claim that a business situs is created because counsel claims that "the deceased in conjunction with his corporation in South Carolina, was *carrying on his Personal Business,* which in business effect was not separate from the business of the

corporation"; that "he apparently *distributed gratuities* from the corporation's assets"; that "when he desired to show a philanthropic spirit it was done by using corporate funds," and that "under the laws of South Carolina he was enabled to do this * * *. He has enjoyed the *immunities and privileges* given him by the laws of South Carolina, having chosen this State as the place for conducting said business, both corporate and personal,"—to this claim, we ask to reply,

(*a*) In the first place the account in the record does not bear out counsel's claim. The account shows that Mr. Beidler and the Santee Company were dealing in reality on a strictly financial basis. He was an officer of the company. He made frequent—practically monthly—trips, evidently to South Carolina, at a cost of seventy to seventy-five dollars a trip. When he made such trips for his company he charged his expenses to it. He charged them interest repeatedly for money he had furnished the company. He even charged (pp. 146) the company fifty-five cents for postage stamps and sixty-one cents for a telegram. On the credit side of the account we even find (p. 148) on November 30, 1912, that when Mrs. Beidler spent a day or so at the company's plant at Santee in South Carolina, that Mr. Beidler was charged (or credited the company) $7.88 therefor. Certainly the claim that the relationship between Mr. Beidler and the Santee Company was that (as counsel claims) he "paid its debts, it paid his debts" is unfounded. And the Supreme Court of South Carolina did not so hold, and the pres-

ent argument is a distinct departure from that Court's holding.

But the cornerstone of counsel's present argument is the claim that Mr. Beidler "*distributed gratuities from the corporation's assets,*" meaning that *he gave to the University of Chicago,* the sum of $648,153.48 represented by four items appearing on pp. 143 and 146 of the record, and charged the same against his company.

Nothing is further from the truth and nothing is further from a logical deduction from the record.

The record shows at p. 146 that the fourth item of the dealing with the University of Chicago was a *loan,* not a gratuity. And the matter is absolutely cleared up by a consideration of paragraph (*j*) of Mr. Beidler's Will (R. 12-13) from which the true situation appears, namely: that when Mr. Beidler executed his Will in 1923, he actually owed a balance of "*One Hundred and Fifty Thousand Dollars* ($150,000.00) * * * *to the University of Chicago, secured by mortgage upon my real estate.*"

In other words, the record fully establishes the truth, namely: that Mr. Beidler borrowed from the funds (evidently from the great endowment fund) of the University of Chicago more than a half a million dollars, mortgaged his own real estate to secure it, and in turn lent the money to the Santee Company in South Carolina. The loan to him from the University of Chicago, which enabled him to advance the half a million or more dollars to the Santee Company had been made in 1915, and then was evidently secured by

a mortgage of his real estate. Evidently in the intervening eight years he had repaid to the University all but $150,000, during which time the Santee Company had in turn repaid him at least $475,000, as the Record shows (pp. 149-150). Evidently Mr. Beidler repaid the University as the Santee Company repaid him.

The existing record clearly establishes these facts.

In passing we note the fact that counsel for the State quote decisions to the general effect that he who attacks the constitutionality of a State statute, assumes the burden of showing that fact clearly. But attention is drawn to the fact that in the Missouri case (74 L. Ed. 593) in which this very question of the presence or absence of a business situs was involved, the absence in the record of a showing that there was a business situs, brought about a reversal. In the instant case, this point is, we submit, negligible. The record here reveals the real facts.

(*b*) A further conclusive and immediate answer to this position is, we submit, that even if Mr. Beidler were conducting his business in South Carolina through the corporation, that this supplies no basis whatsoever for claiming that the resultant debt, which was due him at the time of his death, has acquired a business situs in South Carolina for the purpose of inheritance taxation. No Court has ever so held. Counsel cites no authority to that effect. A business situs as to a fund of money has repeatedly been applied only where there has been a business of lending and relending that fund of money, done within the

State claiming the tax, by the lender or by a resident agent therein.

Liverpool Insurance Company *vs.* Board of Assessors, 221 U. S. 346-356.

Cooley on Taxation, 4 Ed., Section 466.

New Orleans *vs.* Stempel, 175 U. S. 309.

Bristol *vs.* Washington County, 177 U. S. 133.

Metropolitan Life Insurance Company *vs.* New Orleans, 205 U. S. 395.

(*c*) The present attempt is to tax a debt due to Mr. Beidler. The present proposal is not to tax Mr. Beidler's Estate or the Santee Company for alleged and fanciful "immunities and privileges" enjoyed by him in South Carolina through the corporation. If the latter existed (and there is no basis for so imagining) they have been fully paid for when the State of South Carolina collected undoubtedly the incorporation tax, the annual license tax, and the annual property tax exacted by its laws, as well as the inheritance tax which Mr. Beidler's Estate has paid to the State of South Carolina on the value of the stock.

The debt which now remains due to Mr. Beidler's Estate has no relation to these matters.

Third Claim.

To the final claim that if either Illinois or South Carolina is to be denied the tax, that South Carolina should be favored, we ask to say simply, that (certainly unless there be a well-defined business situs, which does not exist herein) this Court has definitely decided in the Minnesota case and in the Missouri case that Illinois is definitely, as the State of Mr. Beidler's

domicile, entitled to the tax, and that double taxation of the kind proposed is not to be tolerated. And we would add finally that the Virginia case cited by counsel is not authority for the idea that the fiction of mobilia sequuntur personam will ever yield *to allow double taxation.* If it ever yields the Court held in the Virginia case that it would yield only *to prevent double taxation.*

The True Rule Upon the Question of the Business Situs.

It is submitted that in a proper case in which a business situs actually exists (which we submit does not exist in this case) that then a uniform rule should be laid down to the effect that nevertheless but a single inheritance tax should be collected, and that should be collected in the State of the domicile of the creditor; and that the collection of inheritance taxes should not be made to depend upon the fortuitous circumstances of each individual case.

This general question is fully covered and is discussed, from his own standpoint, in a brief filed herein by Hon. Seth T. Cole, Tax Commissioner of the State of New York as amicus curiæ, to which brief we ask the Court's attention as in our behalf.

All of which is respectfully submitted.

ARTHUR B. SCHAFFNER,
P. F. HENDERSON,
HENDERSONS & SALLEY,
Attorneys for Appellants.

(6466)